

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-004-12-1-5-00034  
45-004-14-1-5-00788-16  
45-004-15-1-5-01004-16  
**Petitioner:** Elkhart Rentals, LLC/Chris Schaap<sup>1</sup>  
**Respondent:** Lake County Assessor  
**Parcel:** 45-07-01-476-026.000-004  
**Assessment Years:** 2012, 2014 & 2015

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated the 2012 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on February 12, 2013. The PTABOA issued notice of its final determination for 2012 on September 12, 2014. Petitioner then timely filed its Form 131 petition with the Board
2. Petitioner initiated the 2014 appeal on April 25, 2015, and the 2015 appeal on October 22, 2015. For both years, the PTABOA failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k). Accordingly, Petitioner filed Form 131 petitions directly with the Board pursuant to Ind. Code § 6-1.1-15-1(o).
3. Petitioner elected to have the appeals heard under the Board’s small claims procedures. Respondent did not elect to have the appeals removed from those procedures.
4. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on October 3, 2016. Neither the ALJ nor the Board inspected the property.
5. Chris Schaap, member of Elkhart Rentals, LLC, was sworn as a witness for Petitioner. Robert Metz, Lake County Hearing Officer, and Edward Gholson, Calumet Township Chief Deputy Assessor, were sworn as witnesses for the Respondent.

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<sup>1</sup> The 2012 appeal was filed by Chris Schaap for Elkhart Rentals, LLC. The 2014 and 2015 appeals were filed by Chris Schaap.

### Facts

6. The subject property is a single-family dwelling located at 746 Matthews Street in Gary.
7. Respondent determined the following assessments for the parcel under appeal:

| Year | Land    | Improvements | Total    |
|------|---------|--------------|----------|
| 2012 | \$3,900 | \$40,700     | \$44,600 |
| 2014 | \$3,900 | \$33,200     | \$37,100 |
| 2015 | \$3,900 | \$33,500     | \$37,400 |

8. Petitioner requested the following assessed values:

| Year | Total    |
|------|----------|
| 2012 | \$11,408 |
| 2014 | \$10,495 |
| 2015 | \$9,656  |

### Record

9. The official record contains the following:
  - a. A digital recording of the hearing
  - b. Exhibits:

|                       |   |
|-----------------------|---|
| Petitioner Exhibit 1: | Appraisal by Roy Gouwens  |
| Petitioner Exhibit 2: | 2012 property record card (“PRC”)   |
| Petitioner Exhibit 3: | 2013 PRC  |
| Petitioner Exhibit 4: | 2014 PRC  |
| Petitioner Exhibit 5: | 2015 PRC  |
| Petitioner Exhibit 6: | Annual Adjustment of Assessed Value Fact Sheet                                    |
| Respondent Exhibit 1: | PRC for the Subject Property  |
| Respondent Exhibit 2: | Multiple Listing Service (“MLS”) Listing Summary for 5714 W. 7 <sup>th</sup> Ave. |
| Respondent Exhibit 3: | MLS Listing Summary for 5126 W. 7 <sup>th</sup> Ave.                              |

Respondent Exhibit 4: MLS Listing Summary for 798 Hovey  
Respondent Exhibit 5: MLS Listing Summary for 1132 Morton St.  
Respondent Exhibit 6: MLS Listing Summary for 1022 Wright St.

Board Exhibit A: Form 131 petitions  
Board Exhibit B: Notices of Hearing  
Board Exhibit C: Hearing sign-in sheet

c. These Findings and Conclusions.

### **Burden**

10. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
11. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court." Ind. Code 6-1.1-15-17.2(b).
12. Second, Ind. Code 6-1.1-15-17.2(d) "applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15," except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), "if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct." Ind. Code § 6-1.1-15-17.2(d).
13. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
14. The assessed value decreased from \$47,000 in 2011 to \$44,600 in 2012. Petitioner, therefore, has the burden of proof for 2012. For 2014, the assessed value decreased from \$37,200 in 2013 to \$37,100 in 2014. Petitioner, therefore, has the burden of proof for 2014. The burden for 2015 will ultimately depend the final determination for 2014.

## Summary of Parties' Contentions

### 15. Petitioner's case:

- a. Petitioner contends the property is over-assessed. Petitioner submitted an appraisal prepared by Roy Gouwens, a certified residential appraiser. Mr. Gouwens prepared the appraisal in conformance with the Uniform Standards of Professional Appraisal Practice ("USPAP"). Mr. Gouwens estimated a value of \$9,200 as of March 1, 2011. *Schaap testimony; Pet'r Ex. 1.*
- b. In an attempt to trend the 2011 appraised value to the 2012 valuation date, Petitioner applied the market adjustment value of 1.24 shown on the 2012 PRC. Applying the 1.24 value to the \$9,200 appraisal estimate results in a proposed assessed value of \$11,408 for 2012. *Schaap testimony; Pet'r. Ex. 2.*
- c. For 2013, the market adjustment value was 1.00. Applying the 1.00 value to the 2012 value of \$11,408 results in a proposed assessed value of \$11,408 for 2013. *Schaap testimony; Pet'r Ex. 3.*
- d. For 2014, the market adjustment was .92. Applying the .92 value to the 2013 value of \$11,408 results in a proposed assessed value of \$10,495 for 2014. *Schaap testimony; Pet'r Ex. 4.*
- e. For 2015, the market adjustment was .92. Applying the .92 value to the 2014 value of \$10,495 results in a proposed assessed value of \$9,656. *Schaap testimony; Pet'r Ex. 5.*
- f. Petitioner contends he told the appraiser to perform the appraisal based on an exterior inspection and as if the properties were in a "move-in" condition, even though they were purchased at a tax sale and had no plumbing or furnaces. *Schaap testimony.*
- g. Petitioner contends that he is the owner of L.A. Ron Homes, LLC. He further contends that he provided the articles of organization for L.A. Ron Homes, LLC to the Calumet Township Assessor's office as requested. *Schaap testimony.*
- h. Petitioner questions the comparability of Respondent's sale properties. The information shows that some of those properties are in excess of 2,000 square feet, are significantly remodeled, and have granite countertops. Conversely, the subject property consists of 900 square feet and is a Section 8 property. *Schaap testimony; Resp't Exs. 2-6.*

16. Respondent's case:
- a. Respondent contends that the property was transferred from Elkhart Rentals, LLC to L.A. Ron Homes, LLC, on September 23, 2013. Respondent contends that this transfer of ownership would void the 2014 and 2015 appeals. *Metz testimony.*
  - b. Respondent points out that the appraiser did not make an interior inspection of the property. Furthermore, Respondent contends that the property is an income-producing property, but the appraiser did not complete an income approach to value. *Metz testimony; Pet'r Ex. 1.*
  - c. Respondent also questions the validity of the appraisal. The appraiser states that there was no sale of the property within a year's time but, Respondent contends, Petitioner must have purchased it prior to the tax years under appeal. Respondent contends that the appraiser commented that there were no comparable sales within the last 12 months. Respondent contends that the appraiser does not state if he is referring to the valuation date or the inspection date. *Metz testimony; Pet'r Ex. 1.*
  - d. Respondent contends that there is sales information from the subject neighborhood showing the value and that those sales are from the relevant time frame. *Metz testimony; Gholson testimony; Resp't Exs. 2-6.*
  - e. Respondent further contends that specific rental information was not available for the property. Respondent used an average rent of \$750 for the property, which was consistent with the value of the property and similar values in the neighborhood. *Gholson testimony.*

#### ANALYSIS

17. Respondent contends ownership of the property transferred from Elkhart Rentals, LLC to L.A. Ron Homes, LLC, on September 23, 2013. Therefore, Respondent contends, the 2014 and 2015 appeals should be void. Conversely, Petitioner contends that he is the owner of L.A. Ron Homes, LLC, and that he supplied the articles of organization to the Calumet Township Assessor's office. Mr. Gholson confirmed that Mr. Schaap did in fact provide those documents. Also, when Mr. Schaap initiated his 2014 and 2015 appeals for the subject property with the PTABOA, the appeals were filed under L.A. Ron Homes, LLC. Respondent fails to explain how a transfer of property would void an appeal. The Board, therefore, determines the 2014 and 2015 petitions are properly before it.
18. Petitioner made a prima facie case for a reduction in the 2012 assessed value. Petitioner, however, failed to make a prima facie case for a reduction for 2014 and 2015. The Board reached its decision for the following reasons:
- a. Real property is assessed based on its "true tax value." which means "the market value-in-use of a property for its current use, as reflected by the utility received by the

owner or by a similar user, from the property.” 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

- b. Regardless of the method used to prove true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for each assessment at issue in these appeals was March 1 of the assessment year. Ind. Code § 6-1.1-4-4.5(f).

#### 2012 Assessment

- a. As stated above, Petitioner had the burden of proof for 2012. Petitioner offered a USPAP compliant appraisal in which a certified residential appraiser valued the subject property at \$9,200 as of March 1, 2011. The Board has regularly found that appraisals performed within a year of the relevant valuation date are temporally sufficient to make a prima facie showing of a property’s true tax value.
- b. Petitioner contends that the appraised value should be trended to the March 1, 2012 valuation date. Petitioner attempted to trend the appraised value to the 2012 valuation date by applying the market adjustment of 1.24 shown on the 2012 PRC.
- c. While the market adjustment appearing on the PRC is applied to the cost of the improvements determined under the Guidelines, it appears that the factor in this case is not reflective of the overall annual trending factor for 2012 because the total assessed value decreased from 2011 to 2012. Furthermore, Petitioner provided no explanation about how or why the market adjustment value appearing on the PRC should be determinative of the overall assessment.
- d. Consequently, the Board rejects Petitioner’s attempt to trend the appraised value using the market adjustment value. However, because Petitioner requested a value higher than the appraised value, the Board will not reduce the assessment below what Petitioner requested. The Board, therefore, finds Petitioner made a prima facie case that the 2012 assessed value should be changed to \$11,400.

- e. Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach the Petitioner's case, the Respondent has the same burden to present probative evidence that the Petitioner faced. *Fidelity Fed. Sav. & Loan v. Jennings Co. Ass'r*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- f. Respondent attempted to impeach the appraisal in several ways. Respondent argued that the appraiser did not inspect the interior of the property and did not do an income approach. Petitioner testified that he requested the appraiser do only exterior inspections. With regard to the income approach issue, the appraiser explained in the Supplemental Addendum that the income approach is not typically used on single family homes. It is based on a gross rent multiplier from comparables that have recently sold and, according to the appraiser, because this was a retrospective appraisal, there was not sufficient relevant data available.
- g. Respondent presented sales information for five properties. Respondent essentially relied on a sales comparison approach to establish that the assessment was correct. MANUAL at 9 (stating that the sales-comparison approach relies on "sales of comparable improved properties and adjusts the selling prices to reflect the subject property's total value."); *see also, Long*, 821 N.E.2d 466, 469.
- h. To effectively use the sales-comparison approach as evidence in a property assessment appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is "similar" or "comparable" to another property do not constitute probative evidence of the comparability of the two properties. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- i. Here, the type of analysis required and the related adjustments are absent from Respondent's evidence. In fact, Respondent made no effort to compare the properties on any level. Additionally, only one sale occurred close to the valuation date of March 1, 2012. The other sales were from 2014 and 2015 and Respondent presented no evidence to relate those sales to the valuation date. Thus, that evidence lacks probative value.
- j. Respondent contends that using the average rent of \$750 for the subject is consistent with the assessed value and with values in the subject neighborhood. The Board presumes Respondent is referencing the application of a gross rent multiplier ("GRM") to determine value. Respondent did not present anything to support the rent rate nor did he state what the GRM actually was. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its

determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm'rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995).

- k. Respondent failed to rebut or impeach Petitioner's prima facie case for a reduction in value. Consequently, the 2012 assessment must be reduced to \$11,408.

#### 2014-2015 Assessments

- a. Petitioner did not appeal the 2013 assessed value, which was \$37,200. The 2014 assessed value was \$37,100, which represented a decrease in value from the prior year. Therefore, Petitioner had the burden of proof for 2014.
- b. For 2014 and 2015, Petitioner presented the same appraisal. Petitioner contends the values should each be trended forward using the market adjustment value found on the respective PRCs.
- c. Petitioner's appraisal has an effective date of March 1, 2011, which is three years prior to the 2014 valuation date and four years prior to the 2015 valuation date. For reasons discussed previously, the Board rejects Petitioner's attempt to trend the appraised value using the market adjustment factor. Consequently, Petitioner failed to make a prima facie case for a reduction in value for the years at issue. Therefore, the 2014 and 2015 assessed values will remain unchanged at \$37,100 and \$37,400, respectively.

#### **CONCLUSION**

19. Petitioner had the burden of proof of proof for 2012 and provided a USPAP compliant appraisal valuing the property at \$9,200. Petitioner, however, requested a value of \$11,408. Respondent failed to rebut or impeach Petitioner's evidence for 2012. For 2014 and 2015, Petitioner had the burden of proof and failed to make a prima facie case for a reduction in the respective assessed values.

#### **FINAL DETERMINATION**

In accordance with the above findings of fact and conclusions of law, the Board determines the 2012 assessed value should be changed to \$11,400. Conversely, there is no change to the 2014 and 2015 assessed values.

ISSUED: January 20, 2017

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.